

## 16 Am. Jur. 2d Constitutional Law § 10

American Jurisprudence, Second Edition | February 2021 Update

### Constitutional Law

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### II. Adoption and Amendment of Constitutions

#### A. Adoption of Constitutions

## § 10. Adoption of United States Constitution

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### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  505, 506

### Treatises and Practice Aids

Constitutional Law Deskbook: Individual Rights § 1:3 (2d ed.) (Bill of rights)

Adoption of the Constitution of the United States is traceable to the people's disappointment with the confederation of states which they had formed in the warmth of mutual confidence after the Revolutionary War.<sup>1</sup> Experience had made it clear that a national government was required for national purposes.<sup>2</sup> Because of this, they determined to establish a federal or national union of states, for the purposes set forth in the Preamble to the Constitution which recites: "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."<sup>3</sup>

The Federal Convention met in 1787 to write the present Constitution of the United States. Several drafts of it were presented for the consideration of the Convention.<sup>4</sup> In September 1787, the Convention completed the great work in which it had been engaged and resolved that the Constitution should be laid before the Congress of the United States to be submitted by that body to conventions of the several states to be convened by their respective legislatures.<sup>5</sup> The Convention expressed the opinion that

as soon as the Constitution should be ratified by the conventions of nine states, Congress should fix a day on which electors should be appointed by the states, a day on which the electors should assemble to vote for President and Vice President, and the time and place for commencing proceedings under this Constitution.<sup>6</sup>

When the conventions of more than nine states adopted the Constitution, Congress, on September 13, 1788, passed a resolution in conformity with the opinions expressed by the Constitutional Convention and appointed the first Wednesday in March of the ensuing year as the day, and the then seat of Congress as the place, for commencing proceedings under the Constitution. The Constitution went into effect in March of 1789.<sup>7</sup>

The original version of the United States Constitution sent to the states for ratification in 1787 did not contain a Bill of Rights and did not otherwise address the issue of religious freedom. The public demand for protection of their rights was reflected in the various states' ratifying conventions.<sup>8</sup> Most of these conventions called for the inclusion of a Bill of Rights in the United States Constitution and patterned their recommendations after their own constitutions and declarations of rights.<sup>9</sup>

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#### Footnotes

- 1 [Chisholm v. Georgia, 2 U.S. 419, 2 Dall. 419, 1 L. Ed. 440, 1793 WL 685 \(1793\).](#)
- 2 [U.S. v. Cruikshank, 92 U.S. 542, 23 L. Ed. 588, 1875 WL 17550 \(1875\).](#)
- 3 [U.S. v. Cruikshank, 92 U.S. 542, 23 L. Ed. 588, 1875 WL 17550 \(1875\).](#)
- 4 [State of Missouri v. State of Illinois, 180 U.S. 208, 21 S. Ct. 331, 45 L. Ed. 497 \(1901\).](#)
- 5 [Owings v. Speed, 18 U.S. 420, 5 L. Ed. 124, 1820 WL 2129 \(1820\).](#)
- 6 [Owings v. Speed, 18 U.S. 420, 5 L. Ed. 124, 1820 WL 2129 \(1820\).](#)
- 7 [Owings v. Speed, 18 U.S. 420, 5 L. Ed. 124, 1820 WL 2129 \(1820\).](#)
- 8 [Martin v. Beer Bd. for City of Dickson, 908 S.W.2d 941 \(Tenn. Ct. App. 1995\).](#)
- 9 [Martin v. Beer Bd. for City of Dickson, 908 S.W.2d 941 \(Tenn. Ct. App. 1995\).](#)

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## 16 Am. Jur. 2d Constitutional Law § 11

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### Constitutional Law

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### II. Adoption and Amendment of Constitutions

#### A. Adoption of Constitutions

## § 11. Adoption of state constitutions

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### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 507 to 510

The various states in the United States have from time to time adopted state constitutions which declare and guarantee the rights and liberties of the individual.<sup>1</sup>

Governmental authority in each state is vested by the state constitutions in the three great divisions of government: the executive, legislative, and judicial authorities. The agencies or departments so created are the agents of the people.<sup>2</sup> They are, in general, separate and distinct departments or agencies independent of each other except to the extent that the action of one is made to constitute a restraint upon the others to keep them within proper bounds and prevent hasty and improvident actions.<sup>3</sup>

Some state constitutions contain a mandatory provision for periodic opportunity for revision by convention.<sup>4</sup>

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### Footnotes

- 1 Ex parte Rhodes, 202 Ala. 68, 79 So. 462, 1 A.L.R. 568 (1918); Ellingham v. Dye, 178 Ind. 336, 99 N.E. 1 (1912).
- 2 Ellingham v. Dye, 178 Ind. 336, 99 N.E. 1 (1912).
- 3 Ellingham v. Dye, 178 Ind. 336, 99 N.E. 1 (1912).
- 4 Raven v. Deukmejian, 52 Cal. 3d 336, 276 Cal. Rptr. 326, 801 P.2d 1077 (1990).

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## 16 Am. Jur. 2d Constitutional Law II B Refs.

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### II. Adoption and Amendment of Constitutions

#### B. Amendment of United States Constitution

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## Research References

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 520 to 523

### A.L.R. Library

A.L.R. Index, Constitutional Law

West's A.L.R. Digest, [Constitutional Law](#) 🔑 520 to 523

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## 16 Am. Jur. 2d Constitutional Law § 12

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### II. Adoption and Amendment of Constitutions

#### B. Amendment of United States Constitution

##### 1. Amendment of United States Constitution, in General

## § 12. Amendment of United States Constitution, generally

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### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 520

[Article V of the United States Constitution](#) governs amendments to the Constitution.<sup>1</sup> The adoption of this article reflects both the framers' realization that the Constitution might, in the progress of time and the development of new conditions, require changes and their intention to provide an orderly manner in which these changes could be accomplished.<sup>2</sup> This article alone confers the power to amend and determines the manner in which the power can be exercised.<sup>3</sup> Insofar as it speaks on that subject, [Article V](#) is supreme, and any provision of a state constitution in conflict therewith must be held at naught.<sup>4</sup>

[Article V](#) insures that deliberation and consideration must precede any proposed change in the Constitution.<sup>5</sup> The Constitution provides two methods of proposing amendments: by the Congress and by convention.<sup>6</sup> [Article V](#) further specifies that amendments are valid to all intents and purposes when ratified by the legislatures of three-fourths of the states or by conventions in three-fourths of the states.<sup>7</sup>

Any question as to whether the amendment procedure was properly followed is a federal question which necessarily must ultimately be decided by the United States Supreme Court, and state and federal courts are bound by decisions of the Supreme Court as to the validity of amendments to the Constitution.<sup>8</sup>

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Footnotes

- 1 U.S. Const. Art. V.
- 2 *Hawke v. Smith*, 253 U.S. 221, 40 S. Ct. 495, 64 L. Ed. 871, 10 A.L.R. 1504 (1920).
- 3 *Coleman v. Miller*, 307 U.S. 433, 59 S. Ct. 972, 83 L. Ed. 1385, 122 A.L.R. 695 (1939).
- 4 *Barlotti v. Lyons*, 182 Cal. 575, 189 P. 282 (1920).
- 5 *Dillon v. Gloss*, 256 U.S. 368, 41 S. Ct. 510, 65 L. Ed. 994 (1921).
- 6 § 13.
- 7 § 15.
- 8 *Keogh v. Neely*, 50 F.2d 685 (C.C.A. 7th Cir. 1931).

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## 16 Am. Jur. 2d Constitutional Law § 13

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### II. Adoption and Amendment of Constitutions

#### B. Amendment of United States Constitution

##### 1. Amendment of United States Constitution, in General

## § 13. Proposal of amendments to United States Constitution

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### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) , 520, 521, 523

Amendments to the United States Constitution are proposed by Congress whenever two-thirds of both houses deem it necessary or by a constitutional convention.<sup>1</sup> In proposing an amendment to the Constitution, Congress is not acting strictly in the exercise of ordinary legislative power,<sup>2</sup> and a congressional resolution proposing an amendment does not require the approval of the President,<sup>3</sup> nor is it affected by a presidential veto.<sup>4</sup>

The United States Constitution contains no limit to what Congress can propose in the way of an amendment to the Constitution, except that no state can be stripped of its equal suffrage in the Senate without its consent.<sup>5</sup> The Supreme Court has thus remarked that an examination of [Article V](#) discloses that it is intended to invest Congress with a wide range of power in proposing amendments.<sup>6</sup> Various amendments have been attacked before the Supreme Court as beyond the power of Congress to propose, but such attacks have always failed.<sup>7</sup> In proposing an amendment, Congress need not include an express declaration that the houses both regard it as essential since the joint resolution is sufficient to show that the proposed amendment was deemed necessary.<sup>8</sup>

[Article V](#) also provides that Congress, on the application of the legislatures of two-thirds of the several states, "shall" call a convention for proposing amendments.<sup>9</sup> The Supreme Court has interpreted "shall" to mean "must"<sup>10</sup> so that the words of this article are peremptory, and nothing in this particular is left to the discretion of Congress. However, Congress must of necessity



decide whether the conditions exist which give rise to this duty, and it must decide whether the applications for a constitutional convention are valid and when a sufficient number of states have petitioned for a convention.<sup>11</sup>

A resolution by a state legislature calling for a national constitutional convention to consider a particular amendment to the Constitution is held to constitute a sufficient application to Congress within the requirement of [Article V](#), without the signature of the governor of the state.<sup>12</sup>

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#### Footnotes

- 1 U.S. Const. Art. V.
- 2 *In re Opinion of the Justices*, 118 Me. 544, 107 A. 673, 5 A.L.R. 1412 (1919).
- 3 *Hawke v. Smith*, 253 U.S. 221, 40 S. Ct. 495, 64 L. Ed. 871, 10 A.L.R. 1504 (1920).
- 4 *Hollingsworth v. State of Virginia*, 3 U.S. 378, 3 Dall. 378, 1 L. Ed. 644, 1798 WL 603 (1798).
- 5 U.S. Const. Art. V.
- 6 *Dillon v. Gloss*, 256 U.S. 368, 41 S. Ct. 510, 65 L. Ed. 994 (1921).
- 7 *Leser v. Garnett*, 258 U.S. 130, 42 S. Ct. 217, 66 L. Ed. 505 (1922) (involving the 19th Amendment, extending suffrage to women).
- 8 *State of Rhode Island v. Palmer*, 253 U.S. 350, 40 S. Ct. 588, 64 L. Ed. 947 (1920).
- 9 U.S. Const. Art. V.
- 10 *United States v. Sprague*, 282 U.S. 716, 51 S. Ct. 220, 75 L. Ed. 640, 71 A.L.R. 1381 (1931).
- 11 *Opinion of the Justices to the Senate*, 373 Mass. 877, 366 N.E.2d 1226 (1977).
- 12 *Opinion of the Justices to the Senate*, 373 Mass. 877, 366 N.E.2d 1226 (1977).

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## 16 Am. Jur. 2d Constitutional Law § 14

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### II. Adoption and Amendment of Constitutions

#### B. Amendment of United States Constitution

##### 1. Amendment of United States Constitution, in General

## § 14. Conclusion of amendatory process to United States Constitution; notice and proclamation

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### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  520, 521, 523

Whenever official notice is received at the National Archives and Records Administration that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Archivist of the United States must forthwith cause the amendment to be published, with the Archivist's certificate, specifying the states by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States.<sup>1</sup>

The principle that if a legislative document is authenticated in regular form by the appropriate officials, a court will treat the document as properly adopted is equally applicable to constitutional amendments.<sup>2</sup> Thus, a duly authenticated official notice to the archivist that a state legislature or a state convention, having the authority to adopt a resolution ratifying a proposed amendment, has done so is conclusive upon the archivist and, when certified by their proclamation, is conclusive upon the courts.<sup>3</sup> This rule holds true even where the states have adopted slightly different versions of the amendment.<sup>4</sup>

The United States Supreme Court will not interfere with the performance by a state of its duty to notify the archivist of its ratification,<sup>5</sup> and once a state has officially forwarded its certificate of ratification to the archivist of the United States, there is no longer a controversy susceptible of judicial determination.<sup>6</sup> Thus, a private citizen may not maintain a suit in equity to prevent the proclamation and enforcement of a pending and about to be ratified amendment on the ground that it will be void.<sup>7</sup> Additionally, after certification, a state court will not, on certiorari, review the validity of the action of a convention called to consider an amendment, the court taking judicial notice of certification by the archivist.<sup>8</sup>

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Footnotes

- 1 1 U.S.C.A. § 106b.
- 2 U.S. v. Thomas, 788 F.2d 1250 (7th Cir. 1986).
- 3 U.S. v. Thomas, 788 F.2d 1250 (7th Cir. 1986); Stubbs v. Commissioner of I.R.S., 797 F.2d 936 (11th Cir. 1986).
- 4 Sisk v. C.I.R., 791 F.2d 58 (6th Cir. 1986); U.S. v. Thomas, 788 F.2d 1250 (7th Cir. 1986).
- 5 Coleman v. Miller, 307 U.S. 433, 59 S. Ct. 972, 83 L. Ed. 1385, 122 A.L.R. 695 (1939).
- 6 Chandler v. Wise, 307 U.S. 474, 59 S. Ct. 992, 83 L. Ed. 1407 (1939).
- 7 Fairchild v. Hughes, 258 U.S. 126, 42 S. Ct. 274, 66 L. Ed. 499 (1922).
- 8 Chase v. Billings, 106 Vt. 149, 170 A. 903 (1934).

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## 16 Am. Jur. 2d Constitutional Law § 15

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### II. Adoption and Amendment of Constitutions

#### B. Amendment of United States Constitution

#### 2. Ratification of Amendments to United States Constitution

## § 15. Ratification of amendments to United States Constitution, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑522

The United States Constitution specifies that amendments are valid to all intents and purposes, as part of the Constitution, when ratified by the legislatures of three-fourths of the states or by conventions in three-fourths of the states "as the one or the other Mode of Ratification may be proposed by the Congress."<sup>1</sup> In either case, the Constitution calls for action by deliberate assemblages representative of the people, which action, it is assumed, will voice the will of the people.<sup>2</sup> Accordingly, the Constitution does not require amendments to be ratified unanimously, and thus a constitutional amendment is properly ratified although it is approved by three-fourths and not all of the states.<sup>3</sup>

Ratification of constitutional amendments has its source in the Federal Constitution and is not an act of legislation within the proper sense of the word,<sup>4</sup> as it is only the expression of the assent of the state to a proposed amendment.<sup>5</sup> In the context of ratifying constitutional amendments, the legislature has an identity that excludes the referendum and the governor's veto.<sup>6</sup> A state legislature's function in ratifying a proposed amendment is a federal one<sup>7</sup> and transcends any limitations sought to be imposed by the people of the states in the constitutions of those states.<sup>8</sup> Thus, a state constitutional provision that no convention or general assembly of the state will act upon any amendment of the Constitution of the United States proposed by Congress to the several states unless such convention or general assembly has been elected after such amendment is submitted is invalid as a limitation upon the general assembly in the exercise of its federally derived power.<sup>9</sup>

The Constitution is silent on how ratifying conventions should be called or constituted, and since there is also no governing federal statute, these matters are left to the states.<sup>10</sup> In one state, the justices are of the opinion that delegates must be elected from various localities within the state and not at large and not by a group system or party system by which the voter would indicate a choice by a cross-mark opposite a given group.<sup>11</sup> In another state, it is proper to require that electors should vote for groups of delegates who are pledged to vote at the convention as dictated by a referendum.<sup>12</sup> Also, under one state constitution, submission of the question of convention or no convention to the voters and the election of delegates in case a majority of votes favor a convention would be valid, but the calling of a convention to pass on a proposed amendment without submitting the question of convention or no convention to a vote would be invalid.<sup>13</sup>

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#### Footnotes

- 1 U.S. Const. Art. V.
- 2 *Dillon v. Gloss*, 256 U.S. 368, 41 S. Ct. 510, 65 L. Ed. 994 (1921).
- 3 *United States v. Horner*, 769 Fed. Appx. 528 (10th Cir. 2019), cert. denied, 140 S. Ct. 296, 205 L. Ed. 2d 154 (2019).
- 4 *Arizona State Legislature v. Arizona Independent Redistricting Com'n*, 135 S. Ct. 2652, 192 L. Ed. 2d 704 (2015).
- 5 *Hawke v. Smith*, 253 U.S. 231, 40 S. Ct. 498, 64 L. Ed. 877 (1920); *State ex rel. Askew v. Meier*, 231 N.W.2d 821 (N.D. 1975).
- 6 *Arizona State Legislature v. Arizona Independent Redistricting Com'n*, 135 S. Ct. 2652, 192 L. Ed. 2d 704 (2015).
- 7 *Leser v. Garnett*, 258 U.S. 130, 42 S. Ct. 217, 66 L. Ed. 505 (1922); *Trombetta v. State of Fla.*, 353 F. Supp. 575 (M.D. Fla. 1973); *Opinion of the Justices to the Senate*, 373 Mass. 877, 366 N.E.2d 1226 (1977).
- 8 *Leser v. Garnett*, 258 U.S. 130, 42 S. Ct. 217, 66 L. Ed. 505 (1922).
- 9 *Trombetta v. State of Fla.*, 353 F. Supp. 575 (M.D. Fla. 1973); *Dyer v. Blair*, 390 F. Supp. 1291 (N.D. Ill. 1975); *Walker v. Dunn*, 498 S.W.2d 102 (Tenn. 1972).
- 10 *In re Opinions of the Justices*, 226 Ala. 565, 148 So. 107 (1933).
- 11 *In re Opinion of the Justices*, 132 Me. 523, 174 A. 846 (1934).
- 12 *In re Opinions of the Justices*, 226 Ala. 565, 148 So. 107 (1933).
- 13 *In re Opinions of the Justices*, 204 N.C. 806, 172 S.E. 474 (1933).

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### II. Adoption and Amendment of Constitutions

#### B. Amendment of United States Constitution

##### 2. Ratification of Amendments to United States Constitution

## § 16. Ratification of United States Constitution by referendum

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### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 522

If Congress directs that the ratification of a constitutional amendment proposed by it will be by state conventions, this confers, by implication, authority on state legislatures to provide for the assembling of such conventions. Provision by a state legislature for a convention to pass upon a proposed amendment to the Federal Constitution is not a legislative act.<sup>1</sup> Therefore, provisions of state constitutions and statutes requiring a referendum to approve any particular act of the legislature cannot be applied in the process of ratifying or rejecting amendments to the Federal Constitution.<sup>2</sup> In other words, voters of the several states are excluded from direct participation in the process of amending the Constitution.<sup>3</sup>

Article V of the Constitution was not changed by the Fourteenth Amendment so as to require ratification of amendments by popular vote.<sup>4</sup> Some of the state courts have, however, taken the position that an act calling a convention to pass upon an amendment to the United States Constitution is subject to a referendum by the voters of the states as provided by their state constitutions.<sup>5</sup> However, a state may not, by initiative or otherwise, compel its legislators to apply for a federal constitutional convention or to refrain from such action.<sup>6</sup>

### Observation:

With regard to a proposed amendment to the [Federal Constitution, Article V](#) does not rule out communication between the members of a state legislature and their constituents by nonbinding referendum. Because each member of the state legislature is free to obtain the views of constituents in the legislative district which the member represents, there is no constitutional obstacle to a state statute providing for a referendum on the proposed amendment, so long as it is nonbinding and only advisory on the members of the legislature.<sup>7</sup>

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#### Footnotes

- 1 [State ex rel. Tate v. Sevier](#), 333 Mo. 662, 62 S.W.2d 895, 87 A.L.R. 1315 (1933).
- 2 [American Federation of Labor v. Eu](#), 36 Cal. 3d 687, 206 Cal. Rptr. 89, 686 P.2d 609 (1984); [State ex rel. Hatch v. Murray](#), 165 Mont. 90, 526 P.2d 1369 (1974).
- 3 [American Federation of Labor v. Eu](#), 36 Cal. 3d 687, 206 Cal. Rptr. 89, 686 P.2d 609 (1984); [State ex rel. Harper v. Waltermire](#), 213 Mont. 425, 691 P.2d 826 (1984).
- 4 [Peter Hand Co. v. U.S.](#), 2 F.2d 449 (C.C.A. 7th Cir. 1924).
- 5 [In re Opinions of the Justices](#), 226 Ala. 565, 148 So. 107 (1933); [Hopgood v. Miller](#), 107 Wash. 449, 181 P. 919 (1919); [Spriggs v. Clark](#), 45 Wyo. 62, 14 P.2d 667, 83 A.L.R. 1364 (1932).
- 6 [American Federation of Labor v. Eu](#), 36 Cal. 3d 687, 206 Cal. Rptr. 89, 686 P.2d 609 (1984); [Opinion of the Justices](#), 673 A.2d 693 (Me. 1996); [State ex rel. Harper v. Waltermire](#), 213 Mont. 425, 691 P.2d 826 (1984).
- 7 [Kimble v. Swackhamer](#), 439 U.S. 1385, 99 S. Ct. 51, 58 L. Ed. 2d 225 (1978).

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## 16 Am. Jur. 2d Constitutional Law § 17

American Jurisprudence, Second Edition | February 2021 Update

### Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

### II. Adoption and Amendment of Constitutions

#### B. Amendment of United States Constitution

##### 2. Ratification of Amendments to United States Constitution

## § 17. Time of ratification of United States Constitution

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 522

In the absence of some stipulated requirement that a proposed amendment to the United States Constitution be ratified by the required number of states within a specified period of time, it would seem that a proposed amendment may be ratified at any time until it is withdrawn from the ratification process.<sup>1</sup>

However, Congress, in proposing an amendment to the Federal Constitution, may, keeping within reasonable limits, fix a definite period for ratification by the states. The Eighteenth Amendment, which was proposed in 1917, and all amendments proposed after 1917 have contained seven-year time limits for ratification by the states.<sup>2</sup> A state court may hold that an attempted ratification of an amendment is ineffective because more than a reasonable time has elapsed since it was proposed by Congress.<sup>3</sup>

Congress, in controlling the promulgation of the adoption of a constitutional amendment, has the final determination of the question whether by lapse of time its proposal of the amendment has lost its vitality prior to the required ratification, and such determination is not subject to review by the courts.<sup>4</sup>

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### Footnotes

<sup>1</sup> [U.S. v. Gugel, 119 F. Supp. 897 \(E.D. Ky. 1954\).](#)



- 2 Coleman v. Miller, 307 U.S. 433, 59 S. Ct. 972, 83 L. Ed. 1385, 122 A.L.R. 695 (1939); Dillon v. Gloss,  
256 U.S. 368, 41 S. Ct. 510, 65 L. Ed. 994 (1921).
- 3 Wise v. Chandler, 270 Ky. 1, 108 S.W.2d 1024 (1937).
- 4 Coleman v. Miller, 307 U.S. 433, 59 S. Ct. 972, 83 L. Ed. 1385, 122 A.L.R. 695 (1939).

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## 16 Am. Jur. 2d Constitutional Law § 18

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### Constitutional Law

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### II. Adoption and Amendment of Constitutions

#### B. Amendment of United States Constitution

##### 2. Ratification of Amendments to United States Constitution

## § 18. Rescission or retraction of ratification of United States Constitution

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 522

As a historical fact demonstrating the attitude of the federal government, according to admitted and accepted practice, if a state legislature has once ratified a federal amendment, a subsequent legislature has no power to rescind such ratification.<sup>1</sup> Such rescission was attempted by Ohio and New Jersey with reference to the Fourteenth Amendment, and by New York with reference to the Fifteenth; but the proclamation of the Secretary of State for the United States was issued, announcing the final adoption of the amendments as a part of the Federal Constitution, notwithstanding the attempted rescission by subsequent legislatures.<sup>2</sup> The attempted rescission was ignored.<sup>3</sup> Another state court holds that where a proposed amendment to the Federal Constitution has been rejected by more than one-fourth of the states, and those rejections have been duly certified to the Secretary of State, the proposed amendment must be viewed as having failed of ratification and a state which rejected the proposed amendment may not thereafter change its position and vote in favor of it even if it might have changed its position while the amendment was still before the people.<sup>4</sup>

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### Footnotes

- <sup>1</sup> [In re Opinion of the Justices](#), 118 Me. 544, 107 A. 673, 5 A.L.R. 1412 (1919).
- <sup>2</sup> [In re Opinion of the Justices](#), 118 Me. 544, 107 A. 673, 5 A.L.R. 1412 (1919).
- <sup>3</sup> [In re Opinion of the Justices](#), 118 Me. 544, 107 A. 673, 5 A.L.R. 1412 (1919).

4 [Wise v. Chandler, 270 Ky. 1, 108 S.W.2d 1024 \(1937\).](#)

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## 16 Am. Jur. 2d Constitutional Law § 19

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### Constitutional Law

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### II. Adoption and Amendment of Constitutions

#### C. Amendment of State Constitutions

##### 1. Amendment of State Constitutions, in General

## § 19. Amendment of state constitutions, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  525

Constitutional amendment is the legal process by which the people may exercise their inalienable and indefeasible right to alter their government, a right which may be protected by the state's constitution itself.<sup>1</sup> The people always have the power to amend constitutional restrictions by expressly and lawfully doing so.<sup>2</sup> Because it is a power inherent in the people,<sup>3</sup> the existence of the power to amend and change state constitutions appears never to have been doubted.<sup>4</sup> By amending a state constitution, the people express their will or intent to change the fundamental law.<sup>5</sup> In matters relating to alterations or changes in constitutional provisions, the courts must exercise the most rigid care to preserve to the people the right assured to them by that instrument.<sup>6</sup>

A state legislature is without the power to alter or amend the state's constitution through a statutory provision.<sup>7</sup> Also, a state legislature's resolution cannot amend a constitutional provision; the resolution, however, can be looked to as an expression of the opinion of the legislature and as an expression of legislative advice.<sup>8</sup> Furthermore, the court has no more power to amend the state constitution than has the legislature.<sup>9</sup> In fact, a constitution can be amended to make constitutional things that were once declared unconstitutional by the state's highest court.<sup>10</sup> This is because only the people of a state are vested with the power to amend their constitution, and that power is plenary.<sup>11</sup> To permit any branch of government to redefine constitutional terms would violate the exclusive power of the people to amend the constitution.<sup>12</sup>

Constitutions may not be amended by violence.<sup>13</sup> A state constitution provides the complete and detailed process for the amendment of that document.<sup>14</sup> Any attempt to revise a constitution or adopt a new one in any manner other than that provided in the existing instrument is almost invariably treated as extraconstitutional and revolutionary.<sup>15</sup>

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Footnotes

- 1 Com., Office of Atty. Gen. ex rel. *Corbett v. East Brunswick Tp.*, 956 A.2d 1100 (Pa. Commw. Ct. 2008).
- 2 *El Castillo Retirement Residences v. Martinez*, 2017-NMSC-026, 401 P.3d 751 (N.M. 2017).
- 3 *Bolln v. Nebraska*, 176 U.S. 83, 20 S. Ct. 287, 44 L. Ed. 382 (1900); *Gatewood v. Matthews*, 403 S.W.2d 716 (Ky. 1966); *Board of Sup'rs of Elections for Anne Arundel County v. Attorney General*, 246 Md. 417, 229 A.2d 388 (1967); *Ex Parte Shires*, 508 S.W.3d 856 (Tex. App. Fort Worth 2016).
- 4 *Ellingham v. Dye*, 178 Ind. 336, 99 N.E. 1 (1912).
- 5 *Ex Parte Shires*, 508 S.W.3d 856 (Tex. App. Fort Worth 2016).
- 6 *In re Angeles Roca First Judicial District Philadelphia County*, 643 Pa. 585, 173 A.3d 1176 (2017).
- 7 *In re Orozco*, 444 B.R. 472 (Bankr. S.D. Fla. 2011); *City of Bothell v. Barnhart*, 156 Wash. App. 531, 234 P.3d 264 (Div. 1 2010), decision *aff'd* on other grounds, 172 Wash. 2d 223, 257 P.3d 648 (2011).
- 8 *Tennessee v. U.S. Department of State*, 329 F. Supp. 3d 597 (W.D. Tenn. 2018), *aff'd* on other grounds, 931 F.3d 499 (6th Cir. 2019).
- 9 *Nate v. Denney*, 2017 WL 3033308 (Idaho 2017).
- 10 *Sherman v. Atlanta Independent School System*, 293 Ga. 268, 744 S.E.2d 26, 294 Ed. Law Rep. 368 (2013).
- 11 *Chevron U.S.A., Inc. v. State*, 578 So. 2d 644, 67 Ed. Law Rep. 844 (Miss. 1991).
- 12 *State v. Ameer*, 458 P.3d 390, 2018-NMSC-030, 2018 WL 1904680 (N.M. 2018).
- 13 *State ex rel. Karlinger v. Board of Deputy State Sup'rs of Elections*, 80 Ohio St. 471, 89 N.E. 33 (1909) (overruled on other grounds in part by, *State ex rel. Automatic Registering Mach. Co. v. Green*, 121 Ohio St. 301, 7 Ohio L. Abs. 381, 168 N.E. 131, 66 A.L.R. 849 (1929)).
- 14 *Costa v. Cortes*, 143 A.3d 430 (Pa. Commw. Ct. 2016), subsequent determination, 142 A.3d 1004 (Pa. Commw. Ct. 2016), *aff'd*, 636 Pa. 508, 145 A.3d 721 (2016).
- 15 *Crawford v. Gilchrist*, 64 Fla. 41, 59 So. 963 (1912); *Moore v. Brown*, 350 Mo. 256, 165 S.W.2d 657 (1942).

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## 16 Am. Jur. 2d Constitutional Law § 20

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### Constitutional Law

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### II. Adoption and Amendment of Constitutions

#### C. Amendment of State Constitutions

##### 1. Amendment of State Constitutions, in General

## § 20. Subject matter and permissible scope of amendments to state constitutions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) , 525, 526

Generally speaking, the people of a state may amend their constitution in any way they see fit<sup>1</sup> and in any particular that they desire, even when a statute enacted for the same purpose would be unconstitutional.<sup>2</sup>

Every part of a state constitution, including the preamble,<sup>3</sup> may be amended, including the provisions authorizing the making of amendments.<sup>4</sup> Further, even a principle that is deeply rooted in a state constitution can be abrogated by constitutional amendment.<sup>5</sup> Provisions may be repealed,<sup>6</sup> and new articles may be added.<sup>7</sup> A proposed amendment may encompass enough to accomplish its purpose even though it affects other provisions of the constitution to that extent, for otherwise, it would not be possible to amend any provision of the constitution if it could not limit, restrict, or modify other provisions of any other article.<sup>8</sup>

Permissible amendments cover a wide (if not limitless) range of subjects, as, for example, there may, by amendment, be inserted in a state constitution self-operating provisions of a legislative nature.<sup>9</sup> Also, an amendment providing that relevant evidence will not be excluded in any criminal proceeding may be added to a state constitution,<sup>10</sup> and a provision consolidating a city and county government and authorizing the people to make and thereafter amend a charter for their government may be passed.<sup>11</sup> Likewise, a state constitutional exemption from ad valorem taxes for certain utilities operated by municipal corporations may be repealed by constitutional amendment.<sup>12</sup>

Footnotes

- 1 State ex rel. Johnson v. Gale, 273 Neb. 889, 734 N.W.2d 290 (2007).
- 2 Ex Parte Shires, 508 S.W.3d 856 (Tex. App. Fort Worth 2016).
- 3 Omaha Nat. Bank v. Spire, 223 Neb. 209, 389 N.W.2d 269 (1986).
- 4 People ex rel. Elder v. Sours, 31 Colo. 369, 74 P. 167 (1903).
- 5 Fonfara v. Reapportionment Com'n, 222 Conn. 166, 610 A.2d 153 (1992).
- 6 Opinion of the Justices, 263 Ala. 158, 81 So. 2d 881 (1955).
- 7 People ex rel. Elder v. Sours, 31 Colo. 369, 74 P. 167 (1903).
- 8 Gray v. Golden, 89 So. 2d 785 (Fla. 1956).
- 9 Downs v. City of Birmingham, 240 Ala. 177, 198 So. 231 (1940).
- 10 In re Lance W., 37 Cal. 3d 873, 210 Cal. Rptr. 631, 694 P.2d 744 (1985).
- 11 People ex rel. Elder v. Sours, 31 Colo. 369, 74 P. 167 (1903).
- 12 Collins v. City of Dalton, 261 Ga. 584, 408 S.E.2d 106 (1991).

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## 16 Am. Jur. 2d Constitutional Law § 21

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### Constitutional Law

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### II. Adoption and Amendment of Constitutions

#### C. Amendment of State Constitutions

##### 1. Amendment of State Constitutions, in General

## § 21. Subject matter and permissible scope of amendments to state constitutions—Federal limitations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 525

The scope of permissible state constitutional amendments is subject to the limitation that such an amendment may not violate the Federal Constitution<sup>1</sup> or conflict with federal statutes or treaties.<sup>2</sup> Thus, a republican form of government guaranteed to the states by the United States Constitution,<sup>3</sup> cannot be dispensed with or abolished.<sup>4</sup>

The United States Constitution is violated by a proposed amendment to a state constitution which would impose term limits on federal elected officials.<sup>5</sup> However, a state constitutional amendment providing that relevant evidence will not be excluded in any state criminal proceeding does not violate the federal constitutional right to be free from unreasonable searches and seizures where the intent of the electorate is that the amendment be applied to any situation in which its application is constitutionally permissible.<sup>6</sup>

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### Footnotes

- 1 [State ex rel. Johnson v. Gale](#), 273 Neb. 889, 734 N.W.2d 290 (2007); [In re Initiative Petition No. 362 State Question 669](#), 1995 OK 77, 899 P.2d 1145 (Okla. 1995).
- 2 [State ex rel. Johnson v. Gale](#), 273 Neb. 889, 734 N.W.2d 290 (2007).
- 3 U.S. Const. Art. IV, § 4.



- 4 New York v. U.S., 505 U.S. 144, 112 S. Ct. 2408, 120 L. Ed. 2d 120 (1992).  
5 Duggan v. Beermann, 249 Neb. 411, 544 N.W.2d 68 (1996); Stumpf v. Lau, 108 Nev. 826, 839 P.2d 120  
(1992) (overruled on other grounds by, Herbst Gaming, Inc. v. Heller, 122 Nev. 877, 141 P.3d 1224 (2006)).  
6 In re Lance W., 37 Cal. 3d 873, 210 Cal. Rptr. 631, 694 P.2d 744 (1985).

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## 16 Am. Jur. 2d Constitutional Law § 22

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### Constitutional Law

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### II. Adoption and Amendment of Constitutions

#### C. Amendment of State Constitutions

##### 2. Method of Amendment of State Constitutions

###### a. Method of Amendment of State Constitutions, in General

## § 22. Method of amendment of state constitutions, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  530, 535, 540

It is settled that amendments to state constitutions are to be made only in the modes pointed out or sanctioned by the instruments themselves.<sup>1</sup> None of the requisite steps may be omitted.<sup>2</sup> Stated differently, the rule is that the constitutional mode of making amendments is mandatory and exclusive<sup>3</sup> and must be strictly<sup>4</sup> or at least substantially<sup>5</sup> followed.<sup>6</sup> Any deviation from the procedure renders the proposed amendment a nullity.<sup>7</sup> Also, where the people, in adopting a constitution, have prescribed the method by which it may be revised or amended, any attempt to amend the fundamental law in violation of a self-imposed restriction is unconstitutional.<sup>8</sup>

The requirements for constitutional amendment should be performed with the greatest certainty, efficiency, care, and deliberation.<sup>9</sup> Indeed, most procedures for changing a constitution have been purposely made cumbersome in order that the organic law may not be easily remolded to fit situations and sentiments which are relatively transitory and fleeting.<sup>10</sup> However, the courts are slow to declare a constitutional amendment which has been adopted invalid on technical grounds.<sup>11</sup>

Some state constitutions provide for a constitution revision commission to meet at specified intervals to submit proposals to the electorate.<sup>12</sup> Others provide for amendment by constitutional convention<sup>13</sup> or legislative proposals and resolutions.<sup>14</sup> While some courts have found that the existence of one method in a state constitution for changing a constitution does not necessarily preclude all others,<sup>15</sup> other courts have made clear that the method in the constitution for amendment is the only method

available.<sup>16</sup> In any case, the proposed amendment must be accurately represented on the ballot; the accuracy requirement applies to all proposed constitutional amendments, including those proposed by a state legislature.<sup>17</sup>

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#### Footnotes

- 1 Thomas v. State ex rel. Cobb, 58 So. 2d 173, 34 A.L.R.2d 140 (Fla. 1952); Sherman v. Atlanta Independent School System, 293 Ga. 268, 744 S.E.2d 26, 294 Ed. Law Rep. 368 (2013); Johnson v. Duke, 180 Md. 434, 24 A.2d 304 (1942).
  - 2 Gebhardt v. McGinty, 243 S.C. 495, 134 S.E.2d 749 (1964).
  - 3 Hunt v. Decatur City Bd. of Educ., 628 So. 2d 393, 88 Ed. Law Rep. 471 (Ala. 1993); Blair v. Cayetano, 73 Haw. 536, 836 P.2d 1066, 77 Ed. Law Rep. 517 (1992); Andrews v. Governor of Maryland, 294 Md. 285, 449 A.2d 1144 (1982).
  - 4 Water Works and Sewer Bd. of City of Prichard v. Board of Water and Sewer Comr's of City of Mobile, 141 So. 3d 958 (Ala. 2013); Stander v. Kelley, 433 Pa. 406, 250 A.2d 474 (1969); Hyder v. Edwards, 269 S.C. 138, 236 S.E.2d 561 (1977).
  - 5 State ex rel. Board of Fund Com'rs v. Holman, 296 S.W.2d 482 (Mo. 1956).
  - 6 State ex rel. Greenlund v. Fulton, 99 Ohio St. 168, 124 N.E. 172 (1919).
  - 7 Water Works and Sewer Bd. of City of Prichard v. Board of Water and Sewer Comr's of City of Mobile, 141 So. 3d 958 (Ala. 2013).
  - 8 Montana Association of Counties v. State by and through Fox, 2017 MT 267, 389 Mont. 183, 404 P.3d 733 (2017).
  - 9 Crawford v. Gilchrist, 64 Fla. 41, 59 So. 963 (1912); State ex rel. Cleveland, C.C. & St. L. Ry. Co. v. Creamer, 83 Ohio St. 412, 94 N.E. 831 (1911).
  - 10 Rivera-Cruz v. Gray, 104 So. 2d 501 (Fla. 1958).
  - 11 § 43.
  - 12 State ex rel. Citizens Proposition for Tax Relief v. Firestone, 386 So. 2d 561 (Fla. 1980).
  - 13 §§ 26 to 28.
  - 14 §§ 29 to 32.
  - 15 Smith v. Cenarrusa, 93 Idaho 818, 475 P.2d 11 (1970); Gatewood v. Matthews, 403 S.W.2d 716 (Ky. 1966).
  - 16 State v. Manley, 441 So. 2d 864 (Ala. 1983).
  - 17 Roberts v. Doyle, 43 So. 3d 654 (Fla. 2010).
- As to validity of amendments, see §§ 33 to 38.

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## 16 Am. Jur. 2d Constitutional Law § 23

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### Constitutional Law

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### II. Adoption and Amendment of Constitutions

#### C. Amendment of State Constitutions

##### 2. Method of Amendment of State Constitutions

###### a. Method of Amendment of State Constitutions, in General

## § 23. Amendment of state constitutions by petitions and initiatives by the people

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  540 to 547

In most states, constitutional amendments may be proposed by initiative<sup>1</sup> and referendum, and the requirements governing the passage of statutes by initiative and referendum must be followed in making changes in the state constitution.<sup>2</sup> Some constitutions, although allowing amendments to be initiated, do not allow constitutional revisions to be initiated.<sup>3</sup> Also, in some states, constitutions cannot be amended through the initiative and referendum process<sup>4</sup> on the theory that amendment of a constitution is not a legislative act and is not within the initiative power reserved to the people.<sup>5</sup> Thus, a state constitution may specifically prohibit the use of an initiative measure for the proposal of multiple unrelated constitutional amendments and revisions to the constitution.<sup>6</sup> In any case, an initiative amendment cannot propose changes that are tantamount to the creation of a new constitution.<sup>7</sup> Also, changes that significantly alter or abolish the form or structure of a state's government, in a manner equivalent to creating a new constitution, are not amendments under a state constitutional provision on initiative amendments.<sup>8</sup> When determining whether an initiative amendment to a state constitution significantly alters or abolishes the form or structure of a state's government in a manner equivalent to creating a new constitution, which an initiative amendment cannot do, it is not necessarily the impact on the operations of government that matters, and a change that recalibrates the relative power of the branches of government, such as limiting or taking away a specific power from one branch, is not, absent a significant effect on the structure of government, a change that is tantamount to the creation of a new constitution.<sup>9</sup>

The fact that a constitution bars the use of initiative or referendum in connection with legislation on a particular subject does not prevent the public from proposing by initiative a constitutional amendment allowing such legislation.<sup>10</sup> However, the constitution cannot be amended by an initiative act which is legislative in its character, even though it is denominated a constitutional amendment.<sup>11</sup>

The initiative power is self-executing,<sup>12</sup> and the power of initiative is to be liberally construed to allow the greatest possible exercise of this valuable right.<sup>13</sup> However, the right of the initiative is not absolute, and it is subject to constitutional and statutory limitations.<sup>14</sup> Acts of the legislature that affect the exercise of the initiative right must further the purpose of the right or facilitate its operation, and if they do not, the legislative acts are invalid.<sup>15</sup>

When a constitutional amendment is proposed by initiative, voters do not have the opportunity to consider and debate the proposition.<sup>16</sup>

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#### Footnotes

- 1 Chula Vista Citizens for Jobs and Fair Competition v. Norris, 782 F.3d 520 (9th Cir. 2015); Cave Creek Unified School Dist. v. Ducey, 231 Ariz. 342, 295 P.3d 440, 289 Ed. Law Rep. 925 (Ct. App. Div. 1 2013), aff'd on other grounds, 233 Ariz. 1, 308 P.3d 1152, 297 Ed. Law Rep. 538 (2013); Citizens Protecting Michigan's Constitution v. Secretary of State, 324 Mich. App. 561, 922 N.W.2d 404 (2018), appeal granted, 913 N.W.2d 657 (Mich. 2018) and judgment aff'd on other grounds, 503 Mich. 42, 921 N.W.2d 247 (2018); Calzone v. Ashcroft, 559 S.W.3d 32 (Mo. Ct. App. W.D. 2018); Montana Association of Counties v. State by and through Fox, 2017 MT 267, 389 Mont. 183, 404 P.3d 733 (2017); State ex rel. Ethics First-You Decide Ohio Political Action Comm. v. DeWine, 147 Ohio St. 3d 373, 2016-Ohio-3144, 66 N.E.3d 689 (2016); In re Initiative Petition No. 420, State Question No. 804, 2020 OK 10, 2020 WL 549240 (Okla. 2020).
- 2 Allen v. Burkhardt, 1962 OK 279, 377 P.2d 821 (Okla. 1962).
- 3 Citizens Protecting Michigan's Constitution v. Secretary of State, 280 Mich. App. 273, 280 Mich. App. 801, 761 N.W.2d 210 (2008), aff'd in part on other grounds, appeal denied in part, 482 Mich. 960, 755 N.W.2d 157 (2008).
- 4 Kohlhaas v. State, Office of Lieutenant Governor, 223 P.3d 105 (Alaska 2010); Lee v. State, 185 Wash. 2d 608, 374 P.3d 157 (2016).
- 5 Ford v. Logan, 79 Wash. 2d 147, 483 P.2d 1247 (1971).
- 6 Geddry v. Richardson, 296 Or. App. 134, 437 P.3d 1163 (2019), review denied, 365 Or. 369, 451 P.3d 983 (2019).
- 7 Citizens Protecting Michigan's Constitution v. Secretary of State, 503 Mich. 42, 921 N.W.2d 247 (2018).
- 8 Citizens Protecting Michigan's Constitution v. Secretary of State, 503 Mich. 42, 921 N.W.2d 247 (2018).
- 9 Citizens Protecting Michigan's Constitution v. Secretary of State, 503 Mich. 42, 921 N.W.2d 247 (2018).
- 10 Thrailkill v. Smith, 106 Ohio St. 1, 1 Ohio L. Abs. 311, 138 N.E. 532 (1922).
- 11 Wallace v. Zinman, 200 Cal. 585, 254 P. 946, 62 A.L.R. 1341 (1927); Chicago Bar Ass'n v. State Bd. of Elections, 137 Ill. 2d 394, 148 Ill. Dec. 744, 561 N.E.2d 50 (1990).
- 12 Colorado Community Health Network v. Colorado General Assembly, 166 P.3d 280 (Colo. App. 2007). As to constitutional provisions as self-executing, generally, see §§ 101 to 107.
- 13 Colorado Community Health Network v. Colorado General Assembly, 166 P.3d 280 (Colo. App. 2007); Committee For A Healthy Future, Inc. v. Carnahan, 201 S.W.3d 503 (Mo. 2006).
- 14 In re Initiative Petition No. 379, State Question No. 726, 2006 OK 89, 155 P.3d 32 (Okla. 2006).
- 15 Colorado Community Health Network v. Colorado General Assembly, 166 P.3d 280 (Colo. App. 2007).
- 16 Montana Association of Counties v. State by and through Fox, 2017 MT 267, 389 Mont. 183, 404 P.3d 733 (2017).

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## 16 Am. Jur. 2d Constitutional Law § 24

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### Constitutional Law

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### II. Adoption and Amendment of Constitutions

#### C. Amendment of State Constitutions

##### 2. Method of Amendment of State Constitutions

###### a. Method of Amendment of State Constitutions, in General

## § 24. Amendment of state constitutions by petitions and initiatives by the people—Sufficiency of petitions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  545

With regard to petitions and elections, numerous cases have come before the courts of those states in which amendment of a constitution by initiative was authorized, with regard to the sufficiency or validity of particular petitions<sup>1</sup> in such respects as form and contents;<sup>2</sup> subject matter;<sup>3</sup> the submission of conflicting measures;<sup>4</sup> the manner and places where potential petition signers may be solicited;<sup>5</sup> the joinder and submission of multiple amendments in a single petition;<sup>6</sup> the number,<sup>7</sup> identity,<sup>8</sup> and qualifications<sup>9</sup> of signers and petition circulators or the genuineness and authentication,<sup>10</sup> verification,<sup>11</sup> sufficiency,<sup>12</sup> or validity of signatures;<sup>13</sup> the right of petition signers to later withdraw their signatures;<sup>14</sup> and the like. Similarly, there are cases dealing with questions relating to the conduct of the election on an initiative petition.<sup>15</sup> Also, an action may be brought involving managers concerned with an effort to obtain signatures for a petition proposing a constitutional amendment.<sup>16</sup>

In general, the procedures applicable to initiatives and referenda generally are equally applicable to petitions involving the proposal of constitutional amendments, and the constitutional and statutory requirements for a voter-initiated referendum must be strictly complied with.<sup>17</sup> However, although statutes implementing a constitutionally created initiative process are required to be followed, failure to adhere to mere technical formalities should not deny the people the power to propose amendments to the constitution, and substantial compliance with the implementing statutes is all that is required.<sup>18</sup> For instance, the gist of

an initiative petition is by its very nature a simple statement that summarizes the petition, and the omission of one substantive detail is not fatal to legal sufficiency, when the omission was not deceitful or misleading.<sup>19</sup>

**Practice Tips:**

Proponents of an initiative petition to amend a state constitution may be required to file or submit a copy of the petition and a copy of the ballot title.<sup>20</sup> Initiative petitions signed and filed in accordance with applicable law are presumptively valid.<sup>21</sup>

For purposes of a state constitutional and statutory requirement that a petition by voters to amend the constitution republish any existing constitutional provision that the proposed amendment would alter or abrogate, an existing provision is only altered or abrogated if the proposed amendment would add to, delete from, or change the actual text of the provision, or would render the provision wholly inoperative.<sup>22</sup> The fact that a proposed amendment might have a direct and obvious effect on the understanding of an existing provision, however, is an insufficient basis from which to conclude that the proposed amendment alters an existing provision.<sup>23</sup> An existing provision is "abrogated" if it is rendered wholly inoperative or, in other words, if the proposed amendment would make the existing provision a nullity or if it would be impossible for the amendment to be harmonized with the existing provision when the two provisions are considered together; an existing provision is not rendered wholly inoperative, however, if it can be reasonably construed in a manner consistent with the new provision.<sup>24</sup>

If a constitutional amendment by initiative seeks to amend multiple sections of the constitution, it should identify the articles or sections of the constitution substantially affected.<sup>25</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Section of State Constitution, adopting ballot initiative process that reserves to the people the power to propose laws and amendments to the Constitution and that states that registered elector shall attest to the validity of the signatures on petition, requires that the personal signature occur in the presence of the person circulating the petition. [Colo. Const. art. 5, § 1\(1, 6\)](#). [Ritchie v. Polis, 2020 CO 69, 467 P.3d 339 \(Colo. 2020\)](#).

### [END OF SUPPLEMENT]

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### Footnotes

- 1 [State ex rel. Scott v. Kirkpatrick, 484 S.W.2d 161 \(Mo. 1972\); State ex rel. Schwartz v. Brown, 32 Ohio St. 2d 4, 61 Ohio Op. 2d 151, 288 N.E.2d 821 \(1972\)](#).
- 2 [State ex rel. Scott v. Kirkpatrick, 484 S.W.2d 161 \(Mo. 1972\)](#) (requirement of enacting clause); [State ex rel. Williams v. Brown, 52 Ohio St. 2d 13, 6 Ohio Op. 3d 79, 368 N.E.2d 838 \(1977\)](#).



The failure of petition signature sheets for a proposed constitutional amendment that would replace partisan primary elections with an open "top-two primary" to completely describe, in a 100-word description of the proposed amendment, the effects of implementing the proposition did not violate the state statute requiring a description of the principal provisions. *Save Our Vote, Opposing C-03-2012 v. Bennett*, 231 Ariz. 145, 291 P.3d 342 (2013).

*Legislature v. Eu*, 54 Cal. 3d 492, 286 Cal. Rptr. 283, 816 P.2d 1309 (1991).

*In re Interrogatories Propounded by Senate Concerning House Bill 1078*, 189 Colo. 1, 536 P.2d 308 (1975).

*Consumers Power Co. v. Attorney General*, 426 Mich. 1, 392 N.W.2d 513 (1986).

*State ex rel. O'Grady v. Brown*, 47 Ohio St. 2d 265, 1 Ohio Op. 3d 378, 354 N.E.2d 690 (1976).

*Floridians Against Expanded Gambling v. Floridians for a Level Playing Field*, 945 So. 2d 553 (Fla. 1st DCA 2006); *In re Initiative Petition No. 379*, State Question No. 726, 2006 OK 89, 155 P.3d 32 (Okla. 2006).

*McClellan v. Meyer*, 900 P.2d 24 (Colo. 1995); *State ex rel. Citizens Proposition for Tax Relief v. Firestone*, 386 So. 2d 561 (Fla. 1980).

*Scott v. Kirkpatrick*, 513 S.W.2d 442 (Mo. 1974); *In re Initiative Petition No. 272*, State Question No. 409, 1963 OK 285, 388 P.2d 290 (Okla. 1963).

*Bragg v. Hall*, 226 Ark. 906, 294 S.W.2d 763 (1956); *Lundberg v. Koontz*, 82 Nev. 360, 418 P.2d 808 (1966).

*Committee For A Healthy Future, Inc. v. Carnahan*, 201 S.W.3d 503 (Mo. 2006).

*Zook v. Martin*, 2018 Ark. 306, 558 S.W.3d 385 (2018).

*Committee For A Healthy Future, Inc. v. Carnahan*, 201 S.W.3d 503 (Mo. 2006).

*Missouri Farm Bureau Federation v. Kirkpatrick*, 603 S.W.2d 947 (Mo. 1980).

*Boucher v. Bomhoff*, 495 P.2d 77 (Alaska 1972).

*Ohio Renal Association v. Kidney Dialysis Patient Protection Amendment Committee*, 154 Ohio St. 3d 86, 2018-Ohio-3220, 111 N.E.3d 1139 (2018).

*Western Devcor, Inc. v. City of Scottsdale*, 168 Ariz. 426, 814 P.2d 767 (1991).

*Committee For A Healthy Future, Inc. v. Carnahan*, 201 S.W.3d 503 (Mo. 2006).

*McDonald v. Thompson*, 2018 OK 25, 414 P.3d 367, 353 Ed. Law Rep. 513 (Okla. 2018).

*In re Initiative Petition No. 397*, State Question No. 767, 2014 OK 23, 326 P.3d 496 (Okla. 2014).

*Montanans for Justice v. State ex rel. McGrath*, 2006 MT 277, 334 Mont. 237, 146 P.3d 759 (2006).

*Protect Our Jobs v. Board of State Canvassers*, 492 Mich. 763, 822 N.W.2d 534 (2012).

*Protect Our Jobs v. Board of State Canvassers*, 492 Mich. 763, 822 N.W.2d 534 (2012).

*Protect Our Jobs v. Board of State Canvassers*, 492 Mich. 763, 822 N.W.2d 534 (2012).

*Florida Carry, Inc. v. University of North Florida*, 133 So. 3d 966, 302 Ed. Law Rep. 1224 (Fla. 1st DCA 2013).

## 16 Am. Jur. 2d Constitutional Law § 25

American Jurisprudence, Second Edition | February 2021 Update

### Constitutional Law

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### II. Adoption and Amendment of Constitutions

#### C. Amendment of State Constitutions

##### 2. Method of Amendment of State Constitutions

###### a. Method of Amendment of State Constitutions, in General

## § 25. Effectuation of amendment of state constitution by submission to vote of the people

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  540 to 542, 549, 550, 566

Amendment of a state constitution is effectuated ultimately by the vote of the people.<sup>1</sup> Approval by a vote of the people is required if a proposed constitutional amendment, whether traceable to legislative action,<sup>2</sup> or to a constitutional convention,<sup>3</sup> or to initiative by the people,<sup>4</sup> is to become effective through adoption.<sup>5</sup> The electors have a right to approve or reject a proposed amendment to the organic law of the state, limited only by those instances where there is an entire failure to comply with a plain and essential requirement.<sup>6</sup> Ordinarily, each constitutional provision which is being directly amended by an initiative measure must be separately submitted to the voters.<sup>7</sup> Likewise, the legislature's independent proposals to amend the constitution must be presented to the voters for a separate vote even if they are proposed in a single resolution.<sup>8</sup> Submission to the electorate may be either at a special or a general election,<sup>9</sup> unless the constitution requires that proposed constitutional amendments be placed on the ballot at a general election.<sup>10</sup>

A constitutional provision requiring a proposed constitutional amendment to be submitted to voters with the vote to be taken in the manner provided by the state's general assembly imposes a mandatory constitutional directive on the general assembly to submit the amendment, in its entirety, to the electorate for a vote and leaves to the discretion of the general assembly only the way the vote must be taken; strict compliance with such textual directives pertaining to constitutional amendments is required.<sup>11</sup> Where a constitution is silent as to the manner of submitting a proposed amendment to the electors, the method is subject to legislative control.<sup>12</sup> Provisions as to the time of submission must be strictly complied with.<sup>13</sup>

Once an initiative measure has been approved by the requisite vote of electors in an election, the measure becomes a duly enacted constitutional amendment.<sup>14</sup> Likewise, when the people have approved and ratified an amendment proposed in the legislature, a constitutional amendment occurs.<sup>15</sup> In some states, constitutional amendments only become effective if two successive general assemblies vote in favor of them; thus, the electorate has an opportunity to reject a proposed amendment that has been approved by the first general assembly by engaging with their legislators and, if needed, replacing them with legislators who will vote in accordance with their view.<sup>16</sup> However, upon rejection of a constitutional amendment by the electorate, the constitution remains unchanged as to that particular issue.<sup>17</sup> Constitutional initiatives, once approved or defeated at a regular statewide election, cannot be resubmitted to the electorate at the next regular statewide election where procedural defects of constitutional proportion caused the first election results thereon to be voided.<sup>18</sup>

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#### Footnotes

- 1 [Towns v. Suttles](#), 208 Ga. 838, 69 S.E.2d 742 (1952); [Nate v. Denney](#), 2017 WL 3033308 (Idaho 2017).
- 2 [§ 29](#).
- 3 [§ 26](#).
- 4 [§§ 23, 24](#).
- 5 [Opinion of the Justices](#), 275 Ala. 372, 155 So. 2d 329 (1963); [Iman v. Bolin](#), 98 Ariz. 358, 404 P.2d 705 (1965); [Board of Sup'rs of Elections for Anne Arundel County v. Attorney General](#), 246 Md. 417, 229 A.2d 388 (1967); [Knapp v. O'Brien](#), 288 Minn. 103, 179 N.W.2d 88 (1970).
- 6 [In re Advisory Opinion to Atty. Gen. re Limits or Prevents Barriers to Local Solar Electricity Supply](#), 177 So. 3d 235 (Fla. 2015).
- 7 [Tinsley v. Superior Court](#), 150 Cal. App. 3d 90, 197 Cal. Rptr. 643, 14 Ed. Law Rep. 1036 (1st Dist. 1983).
- 8 [State ex rel. Loontjer v. Gale](#), 288 Neb. 973, 853 N.W.2d 494 (2014).
- 9 [In re Opinion of the Justices](#), 244 N.C. 748, 93 S.E.2d 853 (1956).
- 10 [Bowen v. Mollis](#), 945 A.2d 314 (R.I. 2008).
- 11 [Westerfield v. Ward](#), 2019 WL 2463046 (Ky. 2019).
- 12 [Martin v. Board of Election Com'rs of City and County of San Francisco](#), 126 Cal. 404, 58 P. 932 (1899); [People ex rel. Kent County Sup'rs v. Loomis](#), 135 Mich. 556, 98 N.W. 262 (1904).
- 13 [Graham v. Jones](#), 198 La. 507, 3 So. 2d 761 (1941); [Opinion of the Justices](#), 157 Me. 525, 175 A.2d 728 (1961).
- 14 [Hollingsworth v. Perry](#), 570 U.S. 693, 133 S. Ct. 2652, 186 L. Ed. 2d 768 (2013); [San Francisco Tomorrow v. City and County of San Francisco](#), 229 Cal. App. 4th 498, 176 Cal. Rptr. 3d 430 (1st Dist. 2014), as modified, (Sept. 4, 2014) and as modified, (Sept. 5, 2014).
- 15 [State ex rel. Ozanne v. Fitzgerald](#), 2011 WI 43, 334 Wis. 2d 70, 798 N.W.2d 436 (2011).
- 16 [Bridgeville Rifle & Pistol Club, Ltd. v. Small](#), 176 A.3d 632 (Del. 2017).
- 17 [Stoughton v. Cohen](#), 281 N.Y. 343, 23 N.E.2d 460 (1939).
- 18 [State ex rel. Montanans for the Preservation of Citizens' Rights v. Waltermire](#), 231 Mont. 406, 757 P.2d 746 (1988).

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## 16 Am. Jur. 2d Constitutional Law § 26

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### Constitutional Law

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### II. Adoption and Amendment of Constitutions

#### C. Amendment of State Constitutions

##### 2. Method of Amendment of State Constitutions

##### b. Amendment of State Constitutions by Constitutional Conventions; Call

## § 26. Amendment of state constitutions by constitutional conventions, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  535, 536

Although the voters in some states may be allowed to amend their state constitutions by initiative,<sup>1</sup> an actual revision of the constitution may be accomplished in other states only by convening a constitutional convention.<sup>2</sup> In some states, constitutional conventions may be called on a limited<sup>3</sup> or emergency<sup>4</sup> basis. A state legislature's calls for a convention are not static, and they can be rescinded.<sup>5</sup>

Constitutional conventions are called under some state constitutions by resolution of the legislature followed by a submission of the question to the electorate.<sup>6</sup> Other states do not require that a call be submitted to the people for their ratification or approval.<sup>7</sup> Further, the legislatures in some jurisdictions have been found to have the power to call a constitutional convention even though the constitution does not specifically provide for the calling of a convention by the legislature.<sup>8</sup> A constitution may also require a different vote for the call of a convention than for the adoption of amendments, and the wisdom of providing such a difference is a question for the persons drafting the constitution rather than for the court.<sup>9</sup> Further, no call for a convention is required when the proposed amendments in the state's constitution have been mandated to accord with federal constitutional requirements.<sup>10</sup> Once the question of calling a convention is proposed to the people, the legislature's discretion is at an end, and upon a favorable vote of the people, the subsequent formal call is only a ministerial function or duty of the legislature.<sup>11</sup>

A defect or imperfection in a call for a convention does not invalidate the amendment process.<sup>12</sup>

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Footnotes

- 1 §§ 23, 24.
- 2 *Kohlhaas v. State, Office of Lieutenant Governor*, 223 P.3d 105 (Alaska 2010); *Professional Engineers in California Government v. Kempton*, 40 Cal. 4th 1016, 56 Cal. Rptr. 3d 814, 155 P.3d 226 (2007).
- 3 *Southern Ry. Co. v. Dunn*, 483 S.W.2d 101 (Tenn. 1972).
- 4 *Priest v. Polk*, 322 Ark. 673, 912 S.W.2d 902 (1995).
- 5 *Howard Jarvis Taxpayers Assn. v. Padilla*, 62 Cal. 4th 486, 196 Cal. Rptr. 3d 732, 363 P.3d 628 (2016).
- 6 *Bennett v. Jackson*, 186 Ind. 533, 116 N.E. 921 (1917); *Stander v. Kelley*, 432 Pa. 1, 246 A.2d 649 (1968); *In re Opinion to the Governor*, 55 R.I. 56, 178 A. 433 (1935).
- 7 *Bates v. Edwards*, 294 So. 2d 532 (La. 1974).
- 8 *City of Bessemer v. Birmingham Elec. Co.*, 252 Ala. 171, 40 So. 2d 193 (1949); *Stander v. Kelley*, 433 Pa. 406, 250 A.2d 474 (1969).
- 9 *Stoliker v. Waite*, 359 Mich. 65, 101 N.W.2d 299 (1960).
- 10 *Jackman v. Bodine*, 43 N.J. 453, 205 A.2d 713 (1964) (legislative reapportionment).
- 11 *Chenault v. Carter*, 332 S.W.2d 623 (Ky. 1960).
- 12 *Snow v. City of Memphis*, 527 S.W.2d 55 (Tenn. 1975); *Southern Ry. Co. v. Fowler*, 497 S.W.2d 891 (Tenn. 1973).

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## 16 Am. Jur. 2d Constitutional Law § 27

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### Constitutional Law

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### II. Adoption and Amendment of Constitutions

#### C. Amendment of State Constitutions

##### 2. Method of Amendment of State Constitutions

##### b. Amendment of State Constitutions by Constitutional Conventions; Call

## § 27. Qualifications and election of delegates to state constitutional convention in regard to amendment of state constitutions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  535, 536

The qualifications for delegates to a state constitutional convention are set out in some state constitutions or statutes. Where the constitution is silent on the matter, the legislature, having plenary power to call a constitutional convention, has the power to prescribe the qualifications for candidates<sup>1</sup> and the manner of electing delegates.<sup>2</sup> The offices of state senator and representative are not incompatible with membership in a constitutional convention unless made incompatible by some provision under the state's constitution.<sup>3</sup>

There is authority that the "one person-one vote" or "equal representation for equal numbers of persons" principle is applicable to the election of members to a constitutional convention.<sup>4</sup> However, there is also contrary authority, based on the view that the only authority of the members of the convention is to propose amendments to be submitted to a vote of the people of the state.<sup>5</sup> The legislature need not provide for partisan participation or the use of political party designation in the election of delegates even though statutory law provides for both with respect to the election of state legislators.<sup>6</sup>

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### Footnotes

- 1 Livingston v. Ogilvie, 43 Ill. 2d 9, 250 N.E.2d 138 (1969).
- 2 City of Bessemer v. Birmingham Elec. Co., 252 Ala. 171, 40 So. 2d 193 (1949).
- 3 Livingston v. Ogilvie, 43 Ill. 2d 9, 250 N.E.2d 138 (1969).
- 4 Forty-Second Legislative Assembly v. Lennon, 156 Mont. 416, 481 P.2d 330 (1971).
- 5 Priest v. Polk, 322 Ark. 673, 912 S.W.2d 902 (1995); Livingston v. Ogilvie, 43 Ill. 2d 9, 250 N.E.2d 138 (1969).
- 6 Livingston v. Ogilvie, 43 Ill. 2d 9, 250 N.E.2d 138 (1969); Opinion of The Justices, 113 N.H. 149, 304 A.2d 86 (1973).

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## 16 Am. Jur. 2d Constitutional Law § 28

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### Constitutional Law

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### II. Adoption and Amendment of Constitutions

#### C. Amendment of State Constitutions

##### 2. Method of Amendment of State Constitutions

##### b. Amendment of State Constitutions by Constitutional Conventions; Call

## § 28. Powers of constitutional convention in regard to amendment of state constitutions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  535, 536

A constitutional convention is not a coordinate branch of the government and exercises no governmental power but, rather, is a body raised by law, in aid of the popular desire to discuss and propose amendments which have no governing force so long as they remain propositions.<sup>1</sup> The fundamental difference between the two is that the legislature has the power to take final action—that is, to make the laws—whereas the constitutional convention has a more narrowly limited power to propose changes for submission to a vote of the people.<sup>2</sup> Thus, a constitutional convention has no enacting capacity unless an incidental one of narrow range is implied as necessary for the purpose of preparing questions of revision and submitting them to the people.<sup>3</sup> Delegates to a constitutional convention exercise no part of the state's sovereign power delegated by the people to the three branches of government.<sup>4</sup>

A convention has no inherent, but only delegated, powers,<sup>5</sup> and the convention derives its whole authority from the people's vote.<sup>6</sup> The powers of a convention are those stated in the legislative call,<sup>7</sup> and judicial relief is available from actions of a constitutional convention taken beyond its authority.<sup>8</sup> People who, acting under a proper resolution of the legislature, vote in favor of calling a constitutional convention are presumed to ratify the terms of the legislative call which thereby becomes the basis of the authority delegated to the convention.<sup>9</sup> The delegates or members are not agents of the legislature, but of the people.<sup>10</sup>



Conventions may either be limited or unlimited, and a limited convention may only consider a specified part or parts of the constitution while an unlimited convention may consider the entire constitution and may alter, reform, or abolish any part or all of it.<sup>11</sup>

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Footnotes

- 1 [Ellingham v. Dye](#), 178 Ind. 336, 99 N.E. 1 (1912).
- 2 [West v. Carr](#), 212 Tenn. 367, 370 S.W.2d 469 (1963).
- 3 [Opinion of the Justices](#), 102 N.H. 565, 163 A.2d 1 (1960); [West v. Carr](#), 212 Tenn. 367, 370 S.W.2d 469 (1963).
- 4 [Board of Sup'rs of Elections for Anne Arundel County v. Attorney General](#), 246 Md. 417, 229 A.2d 388 (1967).
- 5 [Ellingham v. Dye](#), 178 Ind. 336, 99 N.E. 1 (1912); [State ex rel. Kvaalen v. Graybill](#), 159 Mont. 190, 496 P.2d 1127 (1972); [Staples v. Gilmer](#), 183 Va. 613, 33 S.E.2d 49, 158 A.L.R. 495 (1945).
- 6 [Illustration Design Group, Inc. v. McCanness](#), 224 Tenn. 284, 454 S.W.2d 115 (1970).
- 7 As to the call of constitutional conventions, generally, see § 26.
- 8 [Riviere v. Wells](#), 270 Ark. 206, 604 S.W.2d 560 (1980).
- 9 [In re Opinion to the Governor](#), 55 R.I. 56, 178 A. 433 (1935).
- 10 [Board of Sup'rs of Elections for Anne Arundel County v. Attorney General](#), 246 Md. 417, 229 A.2d 388 (1967).
- 11 [Opinion of the Justices](#), 264 A.2d 342 (Del. 1970); [Snow v. City of Memphis](#), 527 S.W.2d 55 (Tenn. 1975).

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